



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2012-N163]

[FF08E00000-FXES11120800000F2-112]

Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan, Environmental Impact Statement, and Implementing Agreement; California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of the Final Environmental Impact Statement (EIS) on the Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan (Plan), along with the Implementing Agreement (IA), for review. The EIS was updated to address the comments received on the 2010 Draft EIS. We are considering issuing an incidental take permit for 18 species in response to applications from the County of Santa Clara; Cities

of San Jose, Gilroy, and Morgan Hill; Santa Clara Valley Transportation Authority, and Santa Clara Valley Water District (applicants). The applicants are currently in the process of creating a Joint Powers Authority (JPA) to implement the Plan. Following its formation, the Service anticipates that the applicants will submit an application to the Service to amend the section 10(a)(1)(B) incidental take permit to add the JPA.

DATES: Written comments must be received by 5 p.m. Pacific Time, **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Obtaining Documents:* You may download copies of the Final EIS, Plan, and IA on the Internet at <http://www.fws.gov/sacramento>. Alternatively, you may use one of the methods below to request hard copies or a CD-ROM of the documents.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *U.S. Mail:* Cori Mustin, Senior Fish and Wildlife Biologist, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *In-Person Drop-off, Viewing, or Pickup:* Call 916-414-6600 to make an appointment during regular business hours at the above address.
- *Fax:* Cori Mustin, Senior Fish and Wildlife Biologist, 916-414-6713, Attn.: Santa Clara Valley Plan/EIS Comments.

Hard bound copies of the Final EIS, Plan, and IA are available for viewing at the following locations:

1. Almaden Branch Library, 6445 Camden Avenue, San Jose, CA 95120.

2. Dr. Martin Luther King, Jr. Library, 150 E San Fernando Street, San Jose, CA 95112.
3. Gilroy Library, 7387 Rosanna Street, Gilroy, CA 95020.
4. Morgan Hill Library, 660 West Main Avenue, Morgan Hill, CA 95037.
5. Central Park Library, 2635 Homestead Road, Santa Clara, CA 95051.
6. City of Palo Alto Main Library, 1233 Newell Road, Palo Alto, CA 94303.
7. Fremont Main Library, 2400 Stevenson Boulevard, Fremont, CA 94538.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Division Chief, Conservation Planning; or Eric Tattersall, Deputy Assistant Field Supervisor, Conservation Planning and Recovery; at 916-414-6600.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Endangered Species Act (Act; 16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the “take” of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538(a)(1)(B)). The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (19)). We have further defined “harm” to mean significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take of listed fish or wildlife (i.e., “take” that is incidental to, and not

the purpose of, otherwise lawful activities). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively. If we issue a permit, the applicants would receive assurances for all species covered by the permit in accordance with our “No Surprises” regulations at 50 CFR 17.22(b)(5) and 17.32 (b)(5) for all species covered by the permit.

Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. However, the applicants propose to include 9 plant species in the Plan to extend the Plan’s conservation benefits to these species. The applicants would receive assurances under the “No Surprises” regulations found in 50 CFR 17.22(b)(5), 17.32(b)(5), and 222.307(g) for all proposed covered species in the Plan.

The EIS analyzes the impacts of the proposed implementation of the Plan by the applicants. The applicants are seeking a permit for the incidental take of 18 covered species, including 9 animal species (2 federally endangered, 3 federally threatened, and 4 unlisted) and 9 plant species (4 federally endangered and 5 unlisted). The permit would provide take authorization for all animal species and assurances for all plant species identified by the Plan as covered species. Take authorized for listed covered animal species would be effective upon permit issuance and adoption of all applicable local ordinances. Take authorization for currently unlisted covered animal species would become effective concurrent with listing, should the species be listed under the Act during the permit term as long as the Plan is being properly implemented.

The proposed permit would include the following five federally listed animal species: The threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*),

threatened California tiger salamander (Central California Distinct Population Segment) (*Ambystoma californiense*), threatened California red-legged frog (*Rana draytonii*), endangered least Bell's vireo (*Vireo bellii pusillus*), and endangered San Joaquin kit fox (*Vulpes macrotis mutica*). The proposed permit would include assurances for the following four federally listed plant species: The endangered Tiburon Indian paintbrush (*Castilleja affinis* ssp. *neglecta*), endangered coyote ceanothus (*Ceanothus ferrisiae*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*).

The unlisted species proposed for coverage under the Plan are the foothill yellow-legged frog (*Rana boylei*), western pond turtle (*Clemmys marmorata*), western burrowing owl (*Athene cunicularia hypugaea*), tricolored blackbird (*Agelaius tricolor*), Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*).

Proposed covered activities include the following seven categories of covered activities: urban development, instream capital projects, instream operation and maintenance activities, rural capital projects, rural operation and maintenance activities, rural development, and conservation strategy implementation. The proposed term of the permit is 50 years.

The proposed 508,669-acre permit area is the area where incidental take of covered species resulting from covered activities could occur and includes the Pajaro River and all or a portion of the Llagas, Uvas, Pescadero, and Pacheco subwatersheds and the Coyote Creek watershed within Santa Clara County. A large portion of the

Guadalupe watershed is also contained within the permit area, as well as small areas outside of each of these watersheds.

Contained within the 508,669-acre permit area is the 48,464-acre expanded study area and permit area for burrowing owl conservation, which includes the northern portion of Santa Clara County and a small portion each of both San Mateo and Alameda Counties (see Figure 1-2 of the Plan). Incidental take in the expanded study area and permit area for burrowing owl conservation will be limited to the implementation of the Plan's western burrowing owl conservation strategy. Incidental take of the western burrowing owl in this portion of the permit area would only be provided to the applicants and those under their jurisdiction and only be provided for the western burrowing owl (not the remaining 17 species covered under the Plan).

Covered activities would result in the permanent loss of up to 17,975 acres in the permit area. Habitat models were developed for most covered species and used in the impacts analysis. Land cover surrogates were used to identify maximum allowable impacts to species for which habitat models could not be developed. The Plan also describes conditions on covered activities to avoid or minimize take of covered species.

The proposed conservation strategy includes establishing a reserve system that would be composed of an estimated 46,496 to 46,920 acres that would be permanently preserved, monitored, and managed.

National Environmental Policy Act Compliance

Our proposal to issue an incidental take permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321

et seq.). The Service prepared the EIS, which is the Federal portion of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS), to analyze the impacts of issuing an incidental take permit based on the Plan. Santa Clara County facilitated the preparation of the EIR portion of the Final EIR/EIS, in compliance with the California Environmental Quality Act (CEQA), but all applicants share the CEQA Lead Agency role. The California Department of Fish and Game is a CEQA Trustee and Responsible Agency. The Final EIR/EIS was developed to inform the public of the proposed action, alternatives, and associated impacts; address public comments received during the public comment period for the Draft EIR/EIS; and disclose irreversible commitments of resources.

The Final EIR/EIS evaluates the impacts of the proposed action described above (i.e., issuance of the permit and implementation of the Final Plan), as well as the No Action Alternative and Alternative A, which are described below.

No Action Alternative

Under the No Action Alternative, the Service would not issue an incidental take permit to the applicants, and the Plan would not be implemented. Under this alternative, projects that may adversely affect federally listed species would require project-level consultation with the Service pursuant to section 7 or section 10 of the Act. This project-level approach would preclude landscape-level conservation planning and would not streamline the current permitting process.

Alternative A (Reduced Permit Term)

Under Alternative A, the Service would issue an incidental take permit, and the applicants would implement a habitat conservation plan and natural community conservation plan that is similar to the Plan described in the proposed action; however, the proposed permit term would be reduced to 30 years. The extent of covered activities and the conservation strategy would be subsequently reduced relative to the proposed action.

The Final EIR/EIS includes all comments received on the Draft EIR/EIS and our responses to those comments. Following a 30-day review period, we will complete a Record of Decision that announces our decision on the action that will be implemented and discusses all factors leading to the decision.

Public Involvement

We published a notice of intent (NOI) to prepare an EIS for this project in the **Federal Register** on September 6, 2007 (72 FR 51247). The NOI announced a public scoping period during which time the public was invited to provide written comments and attend a public scoping meeting held on September 26, 2007, in Morgan Hill, California. On December 17, 2010, we published a notice of availability of the Draft Plan, EIS, and IA in the **Federal Register** (75 FR 79013). Two public meetings were held, the first on February 9, 2011, in Morgan Hill, California, and the second on February 15, 2011, in Palo Alto, California. The Draft documents were available for a 120-day public comment period, which concluded on April 18, 2011.

Public Review

Copies of the Final EIR/EIS, Plan, and IA are available for review (see **ADDRESSES**). Any comments we receive will become part of the administrative record and may be available to the public. If you wish to comment on the Final EIS, Plan, or IA, you may submit your comments to the address listed in **ADDRESSES**. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the Act. A permit decision will be made no sooner than 30 days after the publication of

the Environmental Protection Agency's Final EIS notice in the **Federal Register** and completion of the Record of Decision.

Authority

This notice is provided pursuant to section 10(a) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: August 21, 2012

**Margaret Kolar
Acting Deputy Regional Director,
Pacific Southwest Region,
Sacramento, California.**

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08/31/2012]**